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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,539	04/16/2004	Charles D. Kim	EMP-139US	2151
24314	7590	01/10/2005	EXAMINER	
JANSSON, SHUPE & MUNGER, LTD 245 MAIN STREET RACINE, WI 53403			COURSON, TANIA C	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,539

Applicant(s)

KIM, CHARLES D.

Examiner

Tania C. Courson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 1, 8, 14 and 18-20 are objected to because of the following informalities:

a) claims 1, 8 and 14: the bullet symbols should be deleted, see the following:

i. Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m).

The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

b) claim 18, line 2, “the lower body” lacks antecedent basis;

c) claim 19, line 2, “the lower body” lacks antecedent basis;

d) claim 20, lines 1-2, “the lower body” lacks antecedent basis;

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Earman (US 970,897).

Earman discloses in Figures 1-4, a level comprising:

- a) element-contacting means (9), level-indicating means (8a) mounted with respect to the element-contacting means (Fig. 1), a cylindrical handle portion (23 & 24) mounted with respect to the element-contacting means (Fig. 3);
- b) wherein the level-indicating means is mounted in the cylindrical handle portion (Fig. 3);
- c) wherein the cylindrical handle portion is connected to a lower body portion (8) which includes the element-contacting means (Fig. 3);
- d) wherein the handle portion and lower body portion are integral (Fig. 3).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 and 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Earman in view of Sebastini (US 3,545,091).

Earman discloses a level including the following:

With respect to claims 1-4 and 7:

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- a) a body (5) including a cylindrical portion (23 & 24) and a trapezoidal portion (8) connected at an interface (Fig. 3), the trapezoidal portion having a level face (9) for measuring a surface (Fig. 3), at least one vial (8a) mounted in the body at a predetermined angular relationship to the level face (Fig. 1);
- b) wherein a first vial (8a) is mounted in the cylindrical portion (Fig. 3) at a predetermined angular relationship to the level face (Fig. 1);
- c) wherein a second vial (26) is mounted in the cylindrical and trapezoidal portions (Fig. 1) at another predetermined angular relationship to the level face (Fig. 1);
- d) wherein the cylindrical portion has a circular cross section (Fig. 3) and a diameter defining a cylindrical portion width (Fig. 3) and wherein the level face is parallel to the diameter (Fig. 1), the level face having a width greater than the cylindrical portion width (Fig. 3);
- e) wherein the cylindrical and trapezoidal portions are integrally formed (Fig. 3);

With respect to claims 8-12:

- a) a planar bottom face surface (9) extending from a first edge to a second edge (Fig. 3), the face surface for contacting an element to be measured (Fig. 1), a vial (8a) containing a bubble for measuring the levelness of the element (Fig. 1), the vial mounted at a determined angular relationship to the face surface (Fig. 1), a planar front surface portion (8) extending upward from the first edge at an acute angle to the face surface and terminating at a front upper edge

(Fig. 3), a planar rear surface portion (8) extending upward from the second edge at an acute angle to the face surface and terminating at a rear upper edge (Fig. 3), a cylindrical portion (23 & 24) mounted to the front and rear upper edges (Fig. 3);

- b) wherein the vial is mounted in the cylindrical portion (Fig. 1);
- c) further comprising a second vial (26) mounted in a recess positioned in the front and rear surface portions and extending into the cylindrical portion (Fig. 1), the second vial being set at another determined angular relationship to the face surface (Fig. 1);
- d) wherein the cylindrical portion has a circular cross section (Fig. 3) and a diameter defining a cylindrical portion width (Fig. 3) and wherein the face surface is parallel to the diameter (Fig. 1), the face surface having a width greater than the cylindrical portion width (Fig. 3);
- e) wherein the cylindrical portion defines a curvilinear surface (Fig. 3).

Earman does not disclose at least two hand-grip apertures to allow a user to grip the cylindrical portion, the hand-grip apertures being spaced apart along an interface, and wherein the hand-grip aperture is defined by an aperture surface extending from a front surface portion to the rear surface portion and by a portion of a curvilinear surface, the user gripping the curvilinear surface to hold the level and wherein the aperture surface is parallel to the face surface.

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Sebastini teaches a level that consists of at least two hand-grip apertures (13) to allow a user to grip the cylindrical portion (Fig. 1), the hand-grip apertures being spaced apart along an interface (Fig. 1), and wherein the hand-grip aperture is defined by an aperture surface extending from a front surface portion to a rear surface portion (Fig. 1) and by a portion of a curvilinear surface (12), the user gripping the curvilinear surface to hold the level (Fig. 1) and wherein the aperture surface is parallel to the face surface (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the level of Earman, so as to include hand grip apertures, as taught by Sebastini, so as to provide a means for increasing facility in transporting the device.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Earman and Sebastini, as applied to claims 1-4 and 6-13 as stated above, and further in view of Jan (US D480319 S).

Earman and Sebastini disclose a level as stated above in paragraph 5.

They do not disclose wherein cylindrical and trapezoidal portions overlap.

Jan teaches a level that contains wherein cylindrical and trapezoidal portions overlap (Fig. 4). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the level of Earman and Sebastini, so as to include overlapping portions, as taught by Jan, in order to ensure a better connection between the portions during use of the level.

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7. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Earman in view of Sebastini.

Earman disclose a level, as stated above in paragraph 3.

Earman does not disclose two hand grip apertures and wherein a cylindrical portion is connected to a lower body portion at web portions surrounding the hand grip apertures.

Sebastini teaches a level that consists of two hand grip apertures (13) and wherein a cylindrical portion is connected to a lower body portion at web portions surrounding the hand-grip apertures (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the level of Earman, so as to include hand grip apertures, as taught by Sebastini, so as to provide a means for increasing facility in transporting the device.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a level:

Kallabis et al. (US D479,139 S)

Motamed (US D389,758)

Webb (US D371,309)

Johnson et al. (US D238,153)

Hoeh et al. (US D186,284)

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Wright et al. (US 5,940,978)

Bettega (US 2,635,350)

Mann (US 2,206,817)

Lea et al. (US 1,786,309)

Taylor (US 423,094)

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
January 6, 2005